

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2004-316-C - ORDER NO. 2005-481  
SEPTEMBER 8, 2005

IN RE: Petition of BellSouth Telecommunications,	) ORDER
Incorporated to Establish Generic Docket to	) DENYING
Consider Amendments to Interconnection	) PETITION
Agreements Resulting from Changes in Law.	)

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition for Rehearing or Reconsideration of Order No. 2005-247 filed by ITC^DeltaCom Communication Inc. (ITC or the Company) in this Docket. ITC does not allege any new facts, nor does it present any new arguments from those presented by the Company prior to the issuance of Order No. 2005-247. Since those arguments, and therefore the present arguments, have already been properly addressed by Order No. 2005-247, we deny the Petition. However, we will further explicate the applicable principles.

ITC's Petition restates its argument that this Commission's Order is inconsistent with the change of law provisions in certain interconnection agreements. This argument was addressed in, and squarely refuted by Order No. 2005-247. Specifically, this Commission held that:

We agree with the New York Commission, which stated that "Paragraph 233 must be read together with the FCC directives that UNE-P obligations for new customers

are eliminated as of March 11, 2005.” “Thus, the right to assert contractual obligations must be read congruently with one of the overall goals of the *TRRO*, which was that certain classes of UNEs were no longer to be made available after March 11, 2005, at TELRIC prices.” Order No. 2005-247 at 5.

We also held that “the FCC has the authority to make its [TRRO] order effective immediately regardless of the contents of particular interconnection agreements” and that “the FCC may undo the effects of its own prior decisions, which have been vacated by the Federal Courts on several occasions.” *Id.*

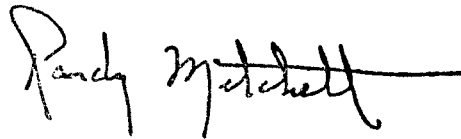
Further, we cited Anchor Point, et al. v. Shoals Sewer Company and the Public Service Commission of South Carolina, 308 S.C.422, 418 S.E. 2d 546 (1992), in which the South Carolina Supreme Court held that, where a matter affected the public interest, the Commission, exercising the State’s police powers, could issue an order which altered a master deed. We went on to state that, clearly, under the police power, this Commission can alter interconnection agreements if a matter of public welfare is involved. We stated that this was indeed the case in the matter before the Commission. Order No. 2005-247 at 6. Thus, we discern no error in our holding regarding the change of law provisions in certain interconnection agreements.

ITC also argued that this Commission “erred in its findings by stating the Federal Communications Commission had determined that UNE Platform harms competition and is therefore contrary to the public interest.” This is clearly not erroneous, and our statement in Order No. 2005-247 was correct. The FCC stated as follows: “Since its inception, UNE-P has been a disincentive to competitive LECs’ infrastructure

investment. Accordingly, consistent with the D.C. Circuit's directive, we bar unbundling to the extent there is any impairment where-as here-unbundling would seriously undermine infrastructure investment and hinder the development of genuine, facilities-based competition." *TRRO* at 218. These provisions of the *TRRO* clearly support the Commission's finding that "[t]he FCC has determined that the UNE Platform harms competition and thus is contrary to the public interest." Order No. 2005-247 at 5. No error was present in our Order.

Accordingly, because of the above-stated reasoning, we deny and dismiss the Petition. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



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Randy Mitchell, Chairman

ATTEST:



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G. O'Neal Hamilton, Vice-Chairman

(SEAL)